will cause the incumbent to make investment decisions going forward that, while perhaps efficient on the basis of short run considerations, do not result in a network that is today optimized to serve current demand. Shelanski (Verizon) Decl. ¶ 30; Aron-Rogerson (SBC) Decl. at 19. This fact explains why, price caps notwithstanding, all existing incumbent networks still contain outdated digital loop carrier loop technologies and analog switches—facilities that no carrier would ever deploy anew today—as well as enormous spare capacity even where demand is declining.

Alternatively, the Bells contend that their standard has the virtue of "accurately" calculating costs. Even if this were true—and, as explained below, it is not—there is no benefit to the Commission in accurately calculating the reproduction costs of an existing network. Accurately calculating the reproduction costs of the Bell networks would merely determine the level of inefficiency that persists in their existing network designs and operations. And for this reason, any order jettisoning TELRIC on this ground could not be sustained on appeal.

### A. The Alternative Standards Proposed By The RBOCs Boil Down To Reproduction Cost.

Although ratemaking is often a complex undertaking, the choice between the competing cost standards at issue here is not a close call. On the one hand, the Commission has in place a cost standard that the Supreme Court has endorsed as reasonable. There is no other hand. The alternative proposed by the Bells is the same standard of reproduction costs that the Commission repudiated in the *Local Competition Order*; that the Supreme Court found to be contrary to the pro-competitive purpose of the Act; and that even the Bells' own economists have derided as economic nonsense.

The Bells struggle to portray their proposals as a mere fine-tuning of the TELRIC replacement cost standard. *See, e.g.*, BellSouth at 2. But the details of the proposals make clear that the Bells seek not to refine TELRIC, but to destroy it. Verizon's economic testimony

reveals this most starkly. "The ILEC's actual forward-looking costs can best be measured by basing UNE prices on the ILEC's existing network, including the configuration of that network, its operational characteristics, and mix of technologies the ILEC will use to supply UNEs." Shelanski (Verizon) Decl. ¶ 16. The "existing network" is then "revalu[ed]" by determining the "actual costs that would be incurred to put in place the ILEC's existing network today." *Id.* ¶ 21; *see also* Kahn-Tardiff (Verizon) Decl. ¶ 33 (rates should be based on "the replacement cost of the current network, accounting for the amounts of equipment and the mix of vintages that it contains"); Verizon at 29-30 (arguing that regulatory precedent supports use of "incumbents' actual networks" as measure of "forward-looking costs").

The other Bells, while paying lip service to forward-looking pricing principles, would also permanently anchor network element rates to the costs of reproducing their existing networks. For example, while BellSouth claims to "support[] the retention of a forward-looking cost method" that "retain[s] a long-run orientation," BellSouth at 2-3, its experts testify that UNE rates should be based on the "cost of a replacement network that assumes existing network routes and plant and equipment locations," NERA (BellSouth) Decl. ¶ 50. If the existing network is populated with obsolete technology, the Commission must assume that this is a "judicious" and efficient result. *Id.* ¶¶ 51-52 & n.42.

Qwest likewise proposes to base UNE rates on "the actual network characteristics of the incumbent provider." Qwest at 15-18; *see also* Weisman (Qwest) Decl. ¶ 20. The results of this approach would be presumed reasonable; and this presumption could be rebutted only by showing that a more efficient technology or design has been "deployed on a scope and scale comparable to that of the ILEC." Qwest at 15-21, 36-37; *see also* Weisman (Qwest) ¶¶ 37-43. Because the only local carriers operating on a "scope and scale comparable to that of" one Bell are the other incumbent Bells, the opportunity to rebut the efficiency presumption is illusory.

SBC also would lower the efficiency bar to the ground. SBC asks the Commission to "abandon the premise that each aspect of [the] carrier's network will reflect the cutting-edge efficiency of a perfectly competitive market or anything resembling it." SBC at 25. Instead, in SBC's view, "efficiency" means only "the more realistic efficiency of the ubiquitous networks built up over time and operated by the ILECs whose 'costs' are at issue." *Id.* Hence, an incumbent's "actual network" is "the only reasonable means for measuring actual forward-looking costs." *Id.* at 26; *see also* Aron-Rogerson (SBC) Decl. at 43 (rates should be based on "the ILEC's actual network and the actual level of efficiencies . . . that it has achieved").

*Given the failure of the Bells to provide the Commission with a clear and complete* model for implementing their reproduction cost concept, the character of the Bell cost standard is revealed most vividly by the Bells' proposed inputs:

- The "route configuration and average loop length" found in the incumbents' "existing network" should be taken as given, without considering whether "carriers building facilities today could deploy a network with a more efficient configuration." Shelanski (Verizon) Decl. ¶ 50; *accord*, BellSouth at 14, 22-23; NERA (BellSouth) Decl. ¶¶ 70-71; Qwest at 30-32; SBC at 56-58; Aron-Rogerson (SBC) 18-19; Verizon at 40; Shelanski (Verizon) Decl. ¶ 50.

- Technology assumptions should replicate the technology mix in the existing network. BellSouth at 24; Qwest at 37; SBC at 58-59; Verizon at 41-42. Thus, the "existing" mix of "loop technologies" should be deployed even if "an entrant could provide service more efficiently" using a different configuration. Shelanski (Verizon) Decl. ¶ 48.

- The "structure mix" found in the incumbents' "existing network" should also be taken as given without considering whether "carriers building facilities today could deploy a network with a more efficient configuration." Shelanski (Verizon) Decl. ¶ 50; *accord*, Qwest at 34-36; SBC at 61-63.

- "Actual fill inputs in ILEC cost studies" should be deemed "dispositive" regardless of whether they represented efficient levels of spare capacity. NERA (BellSouth) Decl. ¶ 78; *accord*, BellSouth Exh. 1 (principle 14); SBC at 4-5, 64-65; Shelanski (Verizon) Decl. ¶ 51-53.

- The best measure of the amount of structure sharing achievable in an efficient network is the "actual" amount of sharing in the embedded network. BellSouth Exh. 1 (principle 14); Verizon at 46-47.

- The expenses recovered from UNE prices should equal the incumbent carriers' current level of expenses. Qwest at 53; SBC at 76; Verizon at 57-59.

- Nonrecurring charges too must reflect existing practices without regard to current best practices. The Commission should allow recovery of the incumbent carriers' "actual" or "out-of-pocket" NRCs, and should presume that current practices are efficient. BellSouth at 47; NERA (BellSouth Decl.) ¶¶ 100-02; Qwest at 55; SBC at 79-83; Verizon at 77-81; Shelanski (Verizon) Decl. ¶¶ 55-61.

Even if the Commission could erase the past eight years and begin anew, the reproduction cost standard advocated by the Bells would have to be rejected as economically unsound. The use of "reproduction cost . . . destroy[s] the value of a replacement cost approach. It would, for example, allow inclusion of an expensive plant in the rate base despite technological change that destroyed the value of the existing plant. The more obsolete the plant, the higher might be the rates." Stephen Breyer, REGULATION AND ITS REFORM 39 (1982); *see also Missouri ex rel. S.W. Bell Tel. Co. v. Public Serv. Comm'n*, 262 U.S. 276, 312 (1923) (Brandeis, J. dissenting) ("If the aim were to ascertain the value (in its ordinary sense) of the utility property, the enquiry would be, not what it would cost to reproduce identical property, but what it would cost to establish a plant which could render the service, or in other words, at what cost could an equally efficient substitute be then produced."). By definition, the reproduction cost standard simply ignores all innovations and advances in efficiency that have occurred since the assets were installed. Willig Reply Decl. ¶¶ 17-18. As such, the reproduction cost standard does not even attempt to replicate the prices that would prevail in effectively competitive or contestable markets, *id.*, which the Bells themselves concede should be the touchstone for UNE rates, *see* Weisman (Qwest) Decl. ¶ 40; NERA (BellSouth) Decl. ¶ 73.

Remarkably, the very Bell economists that now purport to endorse the use of reproduction costs have derided it in the past as inherently flawed. "The 'reproduction cost' to

which prices in purely competitive markets tend to correspond is not the current cost of reproducing the existing plant, brick by brick, but the current cost of producing the service *with the most modern technology available*." Alfred Kahn, I THE ECONOMICS OF REGULATION, 112 (1970) (emphasis added). If "particular assets are really to be replaced in kind, there must be something wrong with allowing *any* obsolescence in the annual depreciation charge." *Id.* at 113 n.71 (emphasis in original). Presumably for these reasons, Dr. Kahn has described the "reproduction" cost standard as "constipat[ing]" the regulatory process. Alfred Kahn, *Competition and Stranded Cost Re-Revisited*, NATURAL RESOURCES JOURNAL 29, 34 (Winter 1997).

Instead, throughout the 1980s and early 1990s, Dr. Kahn and other NERA economists were avid proponents of the "stand-alone cost" test as a constraint on the freight transportation rates charged by market-dominant railroads and energy pipelines. *See* Alfred Kahn, THE PASSING OF THE PUBLIC UTILITY CONCEPT: A REPRISE 18-19 (1983) (arguing that railroad rates for market-dominant traffic should be limited to the stand-alone cost of "carrying coal by the most efficient means available," including slurry pipelines); *Williams Pipe Line Co.*, FERC Docket No. IS90-21-000, 39 Tr. 6352-54, 6455-57, 6374, 6380, 6458, 6504-05, 6511 (July 9, 1991) (testimony of Dr. Kahn) (recommending that rates for both individual services and overall company earnings be constrained by the stand-alone cost test). As endorsed by Dr. Kahn, the stand-alone cost test embodied a vision of "blank slate" hypothetical efficiency far more radical and uncompromising than the scorched node efficiency standard ultimately codified in the TELRIC rules. Stand-alone costs, he emphasized, are "the minimum costs that an efficient new . . . supplier would incur to provide some or all of [the incumbent's] existing services in the absence of barriers to entry." *Williams*, 39 Tr. 6353 (testimony of Dr. Kahn). For this reason,

Dr. Kahn has explained, the constraints imposed by the past investment decisions of the incumbent firm are economically irrelevant:

> Q. Assume two hypothetical pipelines, sir, that provide identical services. One pipeline is a lean, efficient system. The other pipeline has let its costs get badly out of control and maybe has made some silly, high-priced purchases in the past. For identical combinations of services, the stand-alone costs of those services should be identical from one company to the other; is that correct?
>
> A. That's correct.
>
> Q. That's because stand-alone costs are the costs that an efficient hypothetical new entrant would incur to provide a group of services?
>
> A. Exactly.
>
> Q. So the efficiency or inefficiency of an existing pipeline by definition does not affect the stand-alone costs of the services it provides?
>
> A. That's correct. *That's exactly the point of the stand alone cost ceiling.*"

*Williams*, 39 Tr. 6374 (testimony of Dr. Kahn) (emphasis added).

Given this basic economics, it is unsurprising that even the Bells seem embarrassed by the implications of their proposed standard. They concede that, where use of reproduction costs could not even pass the red-face test (*e.g.*, where the incumbent networks continue to employ analog switches), perhaps slight departures from the strict reproduction cost standard might be allowed. SBC at 32.[1] For example, Verizon and SBC suggest that some (but not all) of the network changes that it is planning in the next few years might be reflected in the "revalued" network. Shelanski (Verizon) Decl. ¶ 22; SBC at 31. But these changes concede the central flaw

[1] SBC declines, however, to indicate how red its face would need to be before it would reject a reproduction cost estimate for a piece of obsolete equipment in favor of an unspecified replacement value.

in the reproduction standard without offering any meaningful cure. Willig Reply Decl. ¶ 21. By allowing rates to reflect near-term changes to the existing network, the Bells implicitly recognize that the existing network design is *not* optimal and can be improved. But at the same time, the improvements that would be permitted—only those actually planned by the incumbent in the next few years—are patently insufficient to achieve the level of efficiency that can be obtained over the long run, when all sunk costs are variable. *Local Competition Order* ¶ 677.

BellSouth's "alternative" to the standard of reproduction costs also concedes its illegitimacy without offering any meaningful improvement. BellSouth proposes a "blended" approach that would allow incumbents to recover *both* the costs of all upgrades planned by the incumbent over an "objective time horizon (e.g., three to five years)"—*i.e.*, the technologies "that will actually be deployed as new facilities and equipment are needed to meet growth or as existing facilities/equipment are replaced," BellSouth at 19 – *and* the costs of the equipment "not being upgraded," including assets whose costs are sunk, *id.* at 15-16. Like BellSouth's primary proposal, however, this alternative approach would take as given the incumbents' "current network systems, routes, equipment locations, etc.," *id.* at 16, "expected incumbent costs," *id.* at 17, "real-world network attributes and cost inputs," *id.* at 18. And the result must be presumed to be efficient as a matter of law even if the costs are inflated by "past inefficiencies" that result from "choices made in the past." *Id.* at 30-31. Indeed, whenever the UNE prices set by a state commission result in "widespread use" of the "platform" of UNEs ("UNE-P" by CLECs, the input values underlying the UNE prices should be found to be inefficiently *low*, and the UNE prices increased until "widespread use of UNE-P" is choked off. *Id.* at 30.

This results-driven approach, if anything, is even worse than reproduction costs. It would allow ILECs to recover the higher costs of piecemeal capacity additions that are economically rational only because much of the embedded investment is sunk in the short run—*e.g.*, add-on

switching capacity, multiple undersized cables, piecemeal replacements of telephone poles, structure sharing percentages that reflect the pre-existing character of existing parallel utility lines—without valuing the *embedded* assets at levels that reflect their sunk character. Willig Decl. ¶ 65; Klick Reply Decl. ¶¶ 33-34.

### B. There Is No Legitimate Basis For Any "Presumption" That The Incumbents' Book Costs And Current Practices Are Equivalent To Long-Run Forward-Looking Costs And Practices.

With the Bells' own economists on record against the reproduction cost standard, the Bells' comments do not even attempt a principled defense of that standard. Instead, they suggest that reproduction costs and forward looking economic costs have magically converged—*i.e.*, that retail price cap regulation and local competition justify a presumption, perhaps even an *irrebuttable* presumption, that existing networks are efficient. The Bells argument is little more than claiming white is black.

*Price Caps.* In its opening comments, AT&T sponsored three declarations that discussed the well-established shortcomings of price cap regulation and explained why "price caps" are not sufficient basis to presume that existing incumbent network design and operation is fully efficient. Willig Decl. ¶¶ 51-58; Klick Decl. ¶¶ 21-28; Selwyn Decl. ¶¶ 12-28. The Bells' comments, by contrast, offer little more than the bromide that price caps, by weakening the direct link between an incumbent's costs and rates, create incentives for *some* improvement in efficiency. *See, e.g.*, Verizon at 26; Aron-Rogerson (SBC) Decl. at 41-43; Kahn-Tardiff (Verizon) Decl. ¶ 10. This proposition, even if true, would not begin to justify the use of reproduction or embedded costs as a surrogate for long run incremental costs.

*First*, price cap regulation, even in its purest form, is still a far weaker goad to efficiency than truly competitive or contestable markets. The penalty for inefficiency in competitive markets can be, and ultimately will be, the demise of the business. The penalty for inefficiency

imposed by price cap regulation is far more attenuated. Klick Decl. ¶ 24; Klick Reply Decl. ¶¶ 16-18; Willig Decl. ¶¶ 53-54; Willig Reply Decl. ¶¶ 40.

*Second*, pure price cap regulation does not exist in practice. Price cap regulation, as actually implemented, is riddled with exceptions and loopholes that allow the regulated carrier to gain additional pricing flexibility by reporting higher costs, and which thus preserve the link between the firm's costs and rates. The price cap rate ceiling is always subject to change by the regulator—and the typical basis for altering the index is that a company's costs have increased at a greater rate than the index. By overinvesting in network capacity, the incumbent provides itself with a powerful argument to seek adjustments to the index that would allow the incumbent to increase its rates. Klick Decl. ¶ 25; Klick Reply Decl. ¶¶ 20-21; Selwyn Decl. ¶¶ 12-28; Selwyn Reply Decl. ¶¶ 9-12; Willig Decl. ¶ 55; Willig Reply Decl. ¶ 41; *see also Verizon*, 535 U.S. at 487 (price caps "do not eliminate gamesmanship").

*Third,* price cap regulation does not eliminate the incentive and ability of local carriers to shift their reported costs among categories of service—and, in particular, to misallocate revenues out of the services that are subject to price caps, to misallocate costs to those services, and to target efficiency improvements away from those services. Hence, adoption of "actual cost" or reproduction cost ratemaking would allow incumbent carriers to force CLECs to bear a disproportionate share of existing inefficiencies. Selwyn Decl. ¶¶ 21-28; Selwyn Reply Decl. ¶¶ 13-16.

*Fourth*, even if price caps somehow managed to create meaningful incentives for the Bells to optimize their networks, there is a clear distinction between the efficiency of the overall network and the efficiency of the subset of the network used to provide UNEs. Competitive carriers are now entitled to lease at TELRIC-based rates only a fraction of the capabilities of the "existing" network. In the *Triennial Review Order*, the Commission eliminated unbundled

access to significant portions of the incumbents' networks, including the broadband capabilities of hybrid loops, FTTH loops, and the loops used to serve enterprise customers. The *Triennial Review Order* also eliminated access to many dedicated and shared transport facilities. One simply cannot "presume" that the optimal network for the Bells' multi-product output mix would coincide with the most efficient network for providing the UNEs at issue here. Selwyn Reply Decl. ¶¶ 5-8; Willig Reply Decl. ¶ 46. For example, pushing fiber further into the existing networks to provide broadband data services may make perfect sense for the incumbents, but deployment of fiber may be needless and inefficient for the narrowband UNEs being offered to competitive carriers. Selwyn Reply Decl. ¶¶ 47, 55; Willig Reply Decl. ¶ 46. Likewise, it may be efficient for incumbents to deploy capacity today to serve future demand, but the costs of those "existing" facilities must be charged to the future ratepayers that use the capacity, not in the lease rates paid by current UNE purchasers. Willig Decl. ¶¶ 88-89. Forcing competitive carriers to pay the cost of reproducing network facilities that they do not use violates both the antidiscrimination provision of section 251(c)(3) and fundamental principles of cost causation. *See Local Competition Order* ¶ 691 ("Costs must be attributed on a cost-causative basis. Costs are causally-related to the network element being provided if the costs are incurred as a direct result of providing the network element or can be avoided, in the long run, when the company ceases to provide them."); *Alabama Electric Cooperative, Inc. v. FERC*, 684 F.2d 20, 27 (D.C. Cir. 1982) (charging non-cost-based rates discriminatory).

*Fifth*, perhaps the most important shortcoming of price cap regulation as a means of forcing existing networks into efficient configurations stems from the sunk nature of much of the investment needed to provide telecommunications services. NERA (BellSouth) Decl. ¶ 87. All agree that under prior rate-of-return regulation, incumbent carriers had powerful incentives to deploy excess capacity because they earned profits on such investments. This excess capacity,

however, does not simply disappear under price caps. To the contrary, it remains in the existing networks because the incremental costs of carrying excess capacity in the short run are far less than the incremental costs of removing it. And where demand has been relatively flat or declining, that short run excess capacity will persist indefinitely. Klick Reply Decl. ¶ 22; Willig Decl. ¶ 57; Willig Reply Decl. ¶ 42.

This difficulty is just a specific instance of a broader principle. When an incumbent invests in a sunk, long-lived asset, that investment necessarily will inform future investment decisions. Klick Reply Decl. ¶ 24; Willig Decl. ¶¶ 55-56; Willig Reply Decl. ¶¶ 43-45. The existence of the sunk asset will cause the incumbent to make investment decisions going forward that, while perhaps efficient on the basis of short run considerations, do not result in a network that is fully optimized to serve current demand. For example, if an incumbent has deployed technology that remains capable of providing service today but is no longer the most cost-effective technology, the inefficient technology will persist in the incumbent's network because it is cheaper to leave that technology in place than to replace it. Similarly, outside plant that is no longer necessary because of changes in where service is demanded will remain in place until it is more costly to maintain it than to remove it.

Verizon's economist concedes this point:

> The mix of facilities and technologies that the ILEC will purchase going forward will necessarily be informed by its existing network configuration and technology. . . . Thus, for example, even if a carrier starting from scratch might deploy a substantial amount of technology known as GR-303 as its switching interface, it may well be inefficient for an ILEC to do so because, among other things, using GR-303 might require it to incur additional costs such as changing other incompatible technologies in its network or developing new operations support systems.

Shelanski (Verizon) Decl. ¶ 30. So too do the other incumbent experts. *See* Aron-Rogerson (SBC) Decl. at 19 ("since the ILEC is not able to replace its entire plant at once, but instead does so incrementally over time, the ILEC . . . is necessarily constrained in its ability to adopt new

technology than is a hypothetical new entrant."); NERA (BellSouth) Decl. ¶ 65 ("For reasons stated earlier, [the existing incumbent network], at any given point in time, contains vestiges of successive generations of technology and managerial practices.").

*Sixth*, any beneficial incentives that price cap regulation may create for network efficiency are likely to be overridden by expressly linking UNE prices to existing network design. *Verizon*, 535 U.S. at 512. Quite obviously, the reproduction cost standard advocated by the incumbents would mute, if not eliminate altogether, the hypothesized benefits of price cap regulation. The incumbents would be able to recover their costs, whether or not they were incurred inefficiently, through the lease rates they charge their competitors. *Id.* Indeed, taken to its logical extreme, the Bells' "reproduction cost" standard would entitle them to a competitive return on capital for all of their assets (regardless of whether "used and useful" or "prudent"). Selwyn Reply Decl. ¶¶ 5-8; Willig Reply Decl. ¶¶ 47-48. In contrast, TELRIC-based rates provide no such anticompetitive incentive. TELRIC prices are not influenced by the actual investment or operational decisions of the firm, but are set on the basis of efficient costs. *Id.*¶ 47.

*Intermodal Competition.* The proposition that the incumbents are already subject to effective "facilities-based" competition (and therefore, can be presumed to have adopted efficient network design and practices) would be laughable if this argument did not have the potential to preclude such competition from emerging altogether. *See* BellSouth at 19; NERA (BellSouth) ¶ 66; Qwest at 21-22; Weisman (Qwest) ¶¶ 18-22; SBC at 25-26; Aron-Rogerson (SBC) at 39-43; Verizon at 26-27; Kahn-Tardiff (Verizon) ¶ 10; Shelanski (Verizon) ¶ 16. The Commission in the *Triennial Review Order*, after thoroughly considering whether there were alternative providers of the network elements at issue, concluded that there were not. Cable telephony serves only a small fraction of the country, and its long-term prospects for expansion are in grave doubt. *Triennial Review Order* ¶¶ 52, 222, 229. Although wireless services are more

ubiquitous, consumers do not view them as a substitute for local, wireline services. *Id.* ¶ 230. VoIP has yet to meet the full quality, safety and customer protection standards of wireline local service, it has gained only a handful of customers to date, and is only available to the small fraction of consumers that have also paid for broadband Internet access.[2]

As Professor Willig explains (¶ 51), the lack of existing competition also provides a complete response to the claim that TELRIC is impeding voluntary "wholesale" arrangements. Kahn-Tardiff (Verizon) Decl. ¶ 13. This is an astonishing claim in light of the fact that the Bells view a *decrease* in wholesale UNE business as a "positive" financial trend.[3] The reason that the Bells have this view should be obvious. The Commission has unbundled only those elements for which it has found that multiple competitive supply is economically infeasible. In those circumstances, incumbent carriers have absolutely no incentive to provide access to their local networks at rates, terms and conditions that would threaten their current ability to earn supracompetitive rates. *Local Competition Order* ¶ 141.

### C. In Any Event, Verifiable Data And Models Needed To Implement The Reproduction Cost Standard Do Not Exist.

The "models" needed to implement the Bells' alternative approaches are vaporware. In the Commission's *Local Competition* proceeding, the Commission had before it four fully operable TELRIC models (HAI, BCM, BCM2, and CPM) to examine. *Local Competition Order* ¶¶ 794-96. Here, by contrast, despite saying how easy it is to implement the reproduction cost standard, the Bells have offered nothing in the way of models to implement the costing approach

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[2] VoIP is a *protocol* for transmitting information over facilities, and VoIP providers use the incumbents' local loops and transport facilities to originate and terminate calls. Vonage, the nation's largest provider of VoIP services, claims about 50,000 total lines – about one-fortieth of one percent of the mass-market total. *See, e.g.*, www.vonage.com/corporate/press_index.php?PR=2003_09_23_0.

[3] *See* http://www.sbc.com/Investor/Financial/Earning_Info/docs/4Q_03_IB_FINAL.pdf (p. 7); http://www.sbc.com/Investor/Financial/Earning_Info/docs/4Q_03_slide_bw.pdf (p. 11).

they advocate. The Bells are asking the Commission to buy a pig in a poke. Klick Decl. ¶¶ 58-74 Klick Reply Decl. ¶ 56.

The reason for the Bells' failure to offer a working "reproduction cost" model is obvious: comprehensive accurate data needed to implement this standard simply do no exist. *Verizon*, 535 U.S. at 517-18 (recognizing inaccuracy of the incumbents' records). For example, the Bells' investment records for hard-wired central office equipment are bloated with "phantom" assets, and there is no reason to believe that the ILECs' records for other classes of assets are any more reliable. *Continuing Property Records Audit* ¶ 1 ("upon a physical examination of the companies' central offices, neither company personnel nor Bureau auditors were able to locate certain central office equipment which is recorded in the companies' books and accounts"). For outside plant, the incumbent carriers' records reflect outdated cable routes and/or cable descriptions, and include redundant or duplicate plant. Klick Decl. ¶¶ 58-74. The reason is that, before the mid-1990s, the incumbents' outside plant records were all in hard copy form. *Id.* ¶¶ 60-63. When the records were began to be computerized, the incumbents rarely went back and tried to incorporate the historical records—which themselves had been modified numerous times. Further, because of poor record keeping, plant that has been retired can still be shown (and often is shown) as existing on outside plant cable diagrams. Klick Decl. ¶ 62; Klick Reply Decl. ¶ 54.

Most fundamentally, the incumbents do not maintain records that can accurately describe, in any sort of readily retrievable and usable fashion, the actual quantities and locations of cables, poles, conduits, trenches and cable types that are currently in place in the ground today in any given study area. Klick Decl. ¶¶ 68-74; Klick Reply Decl. ¶¶ 54, 56. Rather, "these records are maintained only for broad categories of plant" and cannot be used to determine accurate per-line costs. Bryant Essay at 4.

A reproduction cost standard would also give the Bells the opportunity to engage in strategic behavior concerning the data needed to implement it. *Cf.* Qwest at 29-30; SBC at 34-35; Verizon at 106-07. In nearly all instances the only sources of data on the actual configuration, routes and technology mix embedded in the existing Bell networks are the Bell companies themselves. And, contrary to the Bell's experts, the Bells would have strong incentive to manipulate or conceal those data. Weisman (Qwest) Decl. ¶ 46 ("This incentive to overstate costs is not necessarily present in an environment in which rivals have the option to self-provision their own networks, purchase network capacity from a third-party, or lease network elements from the incumbent providers."). As Professor Willig explains (¶ 84), competitive carriers do *not* have the option of self-provisioning the network elements at issue or leasing them from third-parties. Thus, the Bells have every incentive to manipulate the data that only they control in a way that is most likely to raise the cost of access to their bottleneck facilities. *Id.* ¶ 55.

Verizon's proposal to choke off discovery in UNE cases confirms this. At the same time that the Bells advocate a standard that would exponentially increase the amount of necessary discovery—for the only way that competitive carriers could develop their own reproduction cost models and test the models of the Bells is to obtain access to the data that the Bells keep that describes their networks—Verizon asks the Commission to subject competitive carriers to onerous procedural rules that would effectively deny the CLECs access to such data. Verizon at 106-08. Instead, Verizon says that the Bells should be required to give competitive carriers only certain "basic"—*i.e.*, highly aggregated and incomplete—information. *Id.* at 106. No further discovery of the Bells would be allowed "without a showing of cause." *Id.* at 107. No further discovery could even be sought until *after* initial cost studies are filed (*id.* at 108)—*i.e.*, *after* the time when the information is most critically needed. Moreover, the amount of discovery

permitted to competitive carriers would be capped at an arbitrary level and an arbitrary time frame. *Id.* at 109. The rawness of Verizon's advocacy confirms what would be in store for the Bells' customers and competitors if the Commission resurrected the Bells' reproduction cost standard. The Bells would ruthlessly exploit the "informational imbalance" inherent in the reproduction cost standard, *Notice* ¶ 61, to quash any competition that could survive even a fair application of that standard.